STATE OF INDIANA
Board of Tax Review

GREGG APPLIANCES, INC.	) On Appeal from the Marion County Property
	) Tax Assessment Board of Appeals
	)
Petitioner,	)
	) Petition for Correction of Error, Form 133
v.	) Petition No. 49-840-97-3-4-01083
	) Petition No. 49-840-98-3-4-01075
Marion COUNTY PROPERTY TAX	) Petition No. 49-840-99-3-4-01201
ASSESSMENT BOARD OF APPEALS	) Petition No. 49-840-00-3-4-00112
And Washington TOWNSHIP	) Parcel No. 8057198
ASSESSOR	)
	)
Respondents.	)

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether lobby area is correctly assessed as an atrium.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-12, Duane R. Zishka with Uzelac & Associates, Inc., on behalf of Gregg Appliances, Inc. (Petitioner), filed Form 133 petitions requesting a review by the State. The Form 133 petitions were filed with the State on October 18, 2001. The Marion County Property Tax Assessment Board of Appeals (PTABOA) Notifications of Final Assessment Determinations are dated September 20, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 22, 2002 before Hearing Officer Paul Stultz. Testimony and exhibits were received into evidence. Mr. Duane Zishka represented the Petitioner. Mr. Peter Amundson, Deputy Assessor represented Washington Township. No one appeared to represent Marion County.

4. At the hearing, the subject Form 133 petitions were made a part of the record and labeled as Board Exhibits A. The Notices of Hearing on Petitions were labeled as Board Exhibits B. In addition, the following exhibits were submitted to the State:

   Petitioner's Exhibit 1 – Photograph of subject building
   Petitioner's Exhibit 2 – Petitioner's proposed pricing of contested area (lobby)
   Petitioner's Exhibit 3 – Copy of 50 IAC 2.2-11-6, Schedule E, Special Features - Atriums
   Petitioner's Exhibit 4 – Package of documents containing the following:
   a. Two (2) page rebuttal for atrium issue
   b. Two (2) photographs of subject building
   c. Copy of Marshall & Swift (section 15, page 18)
   d. Copy of Petition Form 133 with attachments

Petitioner's Exhibit 5 – Copies of three (3) blueprints of subject building

Respondent's Exhibit 1 – Copy of two (2) photographs of the Hellyer building
Respondent's Exhibit 2 – Copy of the State's Final Determination of the Hellyer real property petition

5. The subject property is an office building located at 4151 East 96th Street, Indianapolis, Washington Township, Marion County.

6. The Hearing Officer did not view the subject property.

7. At the hearing, the parties agreed the years under appeal are 1997 through 2000. The assessed values of record for all four (4) years are:

Land	$644,830
Improvements	$1,256,870

Whether lobby area is correctly assessed as an atrium.

8. Petitioner testified that the area in question (1,530 square feet) does not fit the brief description in 50 IAC 2.2-11-6, Schedule E- Atriums, and is therefore not an atrium. The subject's blueprints show normal steel framing used with no notations of fireproof steel framing or glazing. The pricing schedule for atriums addresses the horizontal costs more than the vertical costs. *Zhiska testimony & Petitioner's Exhibit 5.*

9. Petitioner argued that in the *Indianapolis Racket Club* court case, the Tax Court stated the taxpayer was entitled to have property assessed using the model with the best fit. The industrial office model is the best fit for the area under review. *Zishka Testimony.*

10. The Respondent presented two (2) photographs of a "comparable" (the Hellyer Building) and a copy of the State Final Determination for said building. The Respondent opined that the exterior portions of the lobby area of the two (2) buildings (subject and Hellyer Building) were very similar and that both had glazing in the front. *Amundson Testimony & Respondent's Exhibit 1.*

11. The Respondent quoted from the Hellyer Building findings (Conclusion of Law ¶63) that stated, "It should be noted that when selecting the proper schedule to value a feature or the selection of the proper base rate, one initially selects the model or schedule that *best resembles the physical characteristics* of that, which is being assessed." All similar areas in similar types of buildings are being assessed as atriums. *Amundson testimony & Respondent's Exhibit 2.*

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is statutorily limited to the issues raised on the Form 133 petition filed with the County, or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code § 6-1.1-15-12. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. The County Auditor can correct certain errors alleged on the Form 133 petition. Ind. Code § 6-1.1-12. Two local officials can also correct error. *Id.* If these local officials do not correct alleged errors, then the Form 133 is referred to and reviewed by the County Board of Review. *Id.* The County Board of Review's decision may then be appealed to the State Board. *Id.* Taxpayers who raise new issues at the State level of appeal circumvent review of the issues by the local officials and the County Board of Review and, thus, do not follow the prescribed

statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 133 petition filed with the County Auditor.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-12.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual

assessments." *Id* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These

presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

13. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. *See Whitley,* 704 N.E. 2d at 1119 (The substantial evidence requirement for a

taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination even though the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

14. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

15. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. Town of St. John V does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Whether lobby area is correctly assessed as an atrium.

18. The only issue under review is whether the correct pricing schedule was used in valuing a portion of the subject building. The portion of the subject structure under review consists of 1,530 square feet valued by the local assessing officials as an atrium (50 IAC 2.2-11-6, Schedule E – GC Special Features, Atriums). The Petitioner requests that the same area be valued using the GCI pricing schedule (50 IAC 2.2-11-6, Schedule A.2 – Industrial Office).

19. Errors arising from an assessor's subjective judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners,* 561 N.E. 2d 852 (Ind. Tax 1990).

20. A Form 133 petition is available for those errors that can be corrected without resorting to subjective determination. *Reams,* 620 N.E. 2d 758 (Ind. Tax 1993).

21. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners,* 676 N.E. 2d 1113, 1116 (Ind. Tax 1997), the Tax Court held:

> Clearly the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ with these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness, it remains a judgment committed to the discretion of the assessor. (Citation omitted).

22. The Form 133 petitions are denied for all the reasons set forth above. No changes in the assessments are made as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of_____, 2002.

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Chairman, Indiana Board of Tax Review